

HOUSE BILL 2971
By Cooper B

AN ACT to amend Tennessee Code Annotated, Title 53;
Title 56; Title 63 and Title 68, relative to pharmacy
benefit managers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 53, Chapter 10, Part 1, is amended by
adding the following as a new section:

53-10-110.

(a) Pharmacy benefits managers and contracts for pharmacy benefits
management shall comply with the requirements of this section.

(b) As used in this section, unless the context otherwise indicates, the
following terms have the following meanings:

(1) "Covered entity" means a nonprofit hospital or medical service
organization, insurer, health coverage plan or health maintenance
organization licensed pursuant to Title 56; a health program administered
by the state in the capacity of provider of health coverage; or an
employer, labor union or other group of persons organized in the state
that provides health coverage to covered individuals who are employed or
reside in the state. "Covered entity" does not include a health plan that
provides coverage only for accidental injury, specified disease, hospital
indemnity, Medicare supplement, disability income or other long-term
care;

(2) "Covered individual" means a member, participant, enrollee,
contract holder or policy holder or beneficiary of a covered entity who is

provided health coverage by the covered entity. "Covered individual" includes a dependent or other person provided health coverage through a policy, contract or plan for a covered individual;

(3) "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 270.20 (1999), as amended;

(4) "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals, the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals or any of the following services provided with regard to the administration of pharmacy benefits:

(A) Mail service pharmacy;

(B) Claims processing, retail network management and payment of claims to pharmacies for prescription drugs dispensed to covered individuals;

(C) Clinical formulary development and management services;

(D) Rebate contracting and administration;

(E) Certain patient compliance, therapeutic intervention and generic substitution programs; and

(F) Disease management programs;

(5) "Pharmacy benefits manager" means an entity that performs pharmacy benefits management. "Pharmacy benefits manager" includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity and includes mail service pharmacy.

(c) A pharmacy benefits manager owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with the provisions of state and federal law.

(d) A pharmacy benefits manager shall notify the covered entity in writing of any activity, policy or practice of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the duties imposed by this subsection.

(e) A pharmacy benefits manager that derives any payment or benefit for the dispensation of prescription drugs within the state, based on volume of sales for certain prescription drugs or classes or brands of drugs within the state, shall disclose that payment or benefit in full to the covered entity.

(f) A pharmacy benefits manager shall disclose to the covered entity all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefits manager and any prescription drug manufacturer or labeler, including, without limitation, formulary management and drug-switch programs, educational support, claims processing and pharmacy network fees that are charged from retail pharmacies and data sales fees.

(g) Compliance with the requirements of this section is required in all contracts for pharmacy benefits management entered into this state or by a covered entity in this state on and after the effective date of this act.

(h) A violation of this section is a violation of Section 56-8-103, as an unfair practice, and shall be punished in accordance with the provisions of title 56, chapter 8, part 1.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.